G. Directory Assistance

If either Party teminates directory assistance calls over the Local Interconnection Trunk Groups, it shall charge the other Party for such directory assistance calls at the rates contained in its tariff.

VI. CONFIDENTIALITY OF DIRECTORY ASSISTANCE AND WHITE PAGES LISTINGS

Pacific will accord TCG's directory listings information the same level of confidentiality which Pacific accords its own directory listing information, and Pacific shall ensure that access to TCG's customer proprietary confidential directory information will be limited solely to those employees who immediately supervise or are directly involved in the processing and publishing of listings and directory delivery. Pacific will not use TCG directory listings for the marketing of telecommunications services.

VII. RESPONSIBILITIES OF THE PARTIES

A. Pacific and TCG agree to treat each other fairly, nondiscriminatorily, and equally for all items included in this Agreement, or related to the support of items included in this Agreement.

B. TCG and Pacific agree to exchange such reports and/or data as provided in this Agreement in Sections V.B.6 to facilitate the proper billing of traffic. Either Party may request an audit of such usage reports on no fewer than 10 business days' written notice and any audit shall be accomplished during normal business hours at the office of the Party being audited (Staten Island, New York for TCG). Such audit must be performed by a mutually agreed-to independent auditor paid for by the Party requesting the audit and may include review of the data described in Sections V.B.4 and V.B.5, above. Such audits shall be requested within six months of having received the PLU factor and usage reports from the other Party.

C. TCG and Pacific will review engineering requirements on a quarterly basis and establish forecasts for trunk and facilities utilization provided under this Agreement. Pacific and TCG will work together to begin providing these forecasts by January 31, 1996. New trunk groups will be implemented as dictated by engineering requirements for either Pacific or TCG.

D. TCG and Pacific shall share responsibility for all Control Office functions for Local Interconnection Trunks and Trunk Groups, and both Parties shall share the overall coordination, installation, and maintenance responsibilities for these trunks and trunk groups.

E. TCG is responsible for all Control Office functions for the meet point trunking arrangement trunks and trunk groups, and shall be responsible for the overall

coordination, installation, and maintenance responsibilities for these trunks and trunk groups.

F. TCG and Pacific shall:

1. Provide trained personnel with adequate and compatible test equipment to work with each other's technicians.

2. Notify each other when there is any change affecting the service requested, including the due date.

3. Coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure its interconnection trunks/trunk groups are installed per the interconnection order, meet agreed-upon acceptance test requirements, and are placed in service by the due date.

4. Perform sectionalization to determine if a trouble is located in its facility or its portion of the interconnection trunks prior to referring the trouble to each other.

5. Advise each other's Control Office if there is an equipment failure which may affect the interconnection trunks.

6. Provide each other with a trouble reporting number that is readily accessible and available 24 hours/7 days a week.

7. Provide to each other test-line numbers and access to test lines.

G. Bilateral Agreements

The Parties shall jointly develop and implement a bilateral agreement regarding technical and operational interfaces and procedures (see attachment for Pacific's proposed bilateral agreement template). The Parties will use their best good-faith efforts to finalize such agreement within 90 days of the effective date of this Agreement.

H. TCG and Pacific will provide their respective billing contact numbers to one another on a reciprocal basis.

VIII. TERM

Except as provided herein, TCG and Pacific agree to interconnect pursuant to the terms defined in this Agreement for a term of one (1) year, and thereafter the Agreement shall continue in force and effect unless and until terminated as provided herein. Either Party may terminate this Agreement by providing written notice of termination to the other

Party, such written notice to be provided at least 60 days in advance of the date of termination; provided, no such termination shall be effective prior to March 1, 1997. In the event of such termination as described herein, this Agreement shall continue without interruption until a) a new interconnection agreement becomes effective between the Parties, or b) the Commission determines that interconnection shall be by tariff rather than contract and both Pacific and TCG have in place effective interconnection tariffs. By mutual agreement, TCG and Pacific may amend this Agreement to modify the term of this Agreement.

IX. EFFECTIVE DATE

The Parties shall file this Agreement by Advice Letter on or before January 17, 1996, and it shall become effective on the date 14 calendar days after the filing, unless rejected by CACD.

X. INSTALLATION OF TRUNKS

The Parties intend to use their best efforts to provision the initial Local Interconnection Trunk orders no later than March 1, 1996. Because January 18, 1996 is the date Pacific will have its operational systems prepared to process two-way Local Interconnection Trunk orders, initial Local Interconnection Trunk orders are those order which are received by Pacific from TCG on or before January 18, 1996. Additional trunks shall be provisioned pursuant to Section XIII below. From the effective date of this Agreement until all of the initial Local Interconnection Trunk Groups in a particular LATA are provisioned or March 1, 1996, whichever is sooner, the Parties agree that:

1. all local calls originated by TCG that would have otherwise been terminated over the Local Interconnection Trunk Groups (defined as those local calls originating from full NXX codes assigned to TCG that are shown in the LERG as resident in TCG end offices on or before the effective date of this Agreement) shall involve compensation for local calls consistent with Section V.B of this Agreement;

2. TCG will not pay Pacific any charges (calculated on a pro-rated basis) for DID trunks (nor charges of any kind related to DID number blocks) over which Pacific delivers calls to TCG where those calls would otherwise have been delivered over the Local Interconnection Trunk Groups; and

3. once all of the Local Interconnection Trunk Groups are in service in a LATA and a coordinated cutover has occurred, TCG will issue disconnect orders for any of the DID trunks mentioned in Section X.2, above, in that LATA.

However, if the provisioning of the Local Interconnection Trunk Groups in a particular LATA is delayed by Pacific beyond March 1, 1996, then the terms of the preceding sentence shall apply until all of the initial Local Interconnection Trunk Groups in that

LATA are provisioned. If the agreed-upon due date for provisioning all of the Local Interconnection Trunk Groups in a particular LATA is missed because of delays by TCG, then the terms of the sentences above would not apply after the due date.

XI. TRUNK FORECASTING

A. The Parties shall work towards the development of joint forecasting responsibilities for traffic utilization over trunk groups. Orders for trunks that exceed forecasted quantities for forecasted locations will be accommodated as facilities and or equipment are available. Intercompany forecast information must be provided by the Parties to each other twice a year. The semi-annual forecasts shall include:

1. Yearly forecasted trunk quantities (which include measurements that reflect actual tandem Local Interconnection and meet point trunks and tandem-subtending Local Interconnection end office equivalent trunk requirements) for a minimum of three (current and plus-1 and plus-2) years;

2. The use of Common Language Location Identifier (CLLI-MSG), which are described in Bellcore documents BR 795-100-100 and BR 795-400-100;

3. A description of major network projects anticipated for the following six months.

B. If differences in semi-annual forecasts of the Parties vary by more than 24 additional DS0 two-way trunks, the companies shall meet to reconcile the forecast to within 24 DS0 trunks for each Local Interconnection Trunk Group.

C. If a trunk group is under 75 percent of CCS capacity on a monthly average basis for each month of any six month period, either Party may issue an order to resize the trunk group, which shall be left with not less than 25 percent excess capacity. In all cases, grade of service objectives identified in Section XII following shall be maintained.

D. Each Party shall provide a specified point of contact for planning, forecasting and trunk servicing purposes.

XII. GRADE OF SERVICE

A blocking standard of one half of one percent (.005) during the average busy hour for final trunk groups between a TCG end office and a Pacific access tandem carrying meet point traffic shall be maintained. All other final trunk groups are to be engineered with a blocking standard of one percent (.01).

XIII. TRUNK SERVICING

A. Orders between the Parties to establish, add, change or disconnect trunks shall be processed by use of an Interconnection Service Request ("ISR").

B. As discussed in this Agreement, both Parties will jointly manage the capacity of Local Interconnection Trunk Groups. Pacific's Circuit Provisioning Assignment Center ("CPAC") will send TCG a Trunk Group Service Request ("TGSR") to TCG to trigger changes Pacific desires to the Local Interconnection Trunk Groups based on Pacific's capacity assessment. TCG will issue an ISR to Pacific's Local Interconnection Service Center ("LISC"):

a) within 10 business days after receipt of the TGSR, upon review of and in response to Pacific's TGSR, or

b) at any time as a result of TCG's own capacity management assessment,

to begin the provisioning process.

C. Orders that comprise a major project shall be submitted at the same time, and their implementation shall be jointly planned and coordinated.

D. TCG will be responsible for engineering its network on its side of the POI. Pacific will be responsible for engineering the POI and its network on its side of the POI.

XIV. TROUBLE REPORTS

TCG and Pacific will cooperatively plan and implement coordinated repair procedures for the meet point and Local Interconnection Trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner.

XV. NETWORK MANAGEMENT

A. Protective Controls

Either Party may use protective network traffic management controls such as 7-digit and 10-digit code gaps on traffic toward each others network, when required to protect the public switched network from congestion due to facility failures, switch congestion or failure or focused overload. TCG and Pacific will immediately notify each other of any protective control action planned or executed.

B. Expansive Controls

Where the capability exists originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes will not be used to circumvent normal trunk servicing. Expansive controls will only be used when mutually agreed to by the Parties.

C. Mass Calling

TCG and Pacific shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes, to prevent or mitigate the impact of these events on the public switched network.

XVI. FORCE MAJEURE

Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, or ordinance of any government or legal body; strikes; or delays caused by the other Party or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

XVII. COMMISSION DECISION

This Agreement shall at all times be subject to such changes or modifications by the Commission as said Commission may, from time to time, direct in the exercise of its jurisdiction. If any such modification renders the Agreement inoperable or creates any ambiguity or requirement for further amendment to the Agreement, the Parties will negotiate in good faith to agree upon any necessary amendments to the Agreement.

XVIII. LIMITATION OF LIABILITY

Except as otherwise provided herein, neither Party shall be liable to the other in connection with the provision of use of services offered under this Agreement for indirect, incidental, consequential, special damages, including (without limitation) damages for lost profits, regardless of the form of action, whether in contract, indemnity, warranty, strict liability, or tort.

XIX. INDEMNITY

Each Party shall indemnify and hold the other harmless from any liabilities, claims or demands (including the costs, expenses and reasonable attorney's fees on account thereof) that may be made by third parties for:

a) personal injuries, including death, or

b) damage to tangible property

resulting from the sole negligence and/or sole wilful misconduct of that Party, its employees or agents in the performance of this Agreement. Each Party shall defend the other at the other's request against any such liability, claim or demand. Each Party shall notify the other promptly of written claims or demands against such Party of which the other Party is solely responsible hereunder.

XX. ASSIGNMENT

This Agreement may be assigned by either Party upon sixty (60) days advance written notice to the other Party.

XXI. DEFAULT

If either Party believes the other is in breach of the agreement or otherwise in violation of law, it shall first give sixty (60) days' notice of such breach or violation and an opportunity for the allegedly defaulting Party to cure. Thereafter, the Parties shall employ the Dispute Resolution procedures set forth at pp. 36-39 of the Order.

XXII. NONDISCLOSURE

A. All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of publication of directory database inclusion, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated orally and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party.

B. Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

C. Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only for performing the covenants contained in the Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.

D. Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

(i) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or

(ii) is or becomes publicly known through no wrongful act of the receiving Party; or

(iii) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or

(iv) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or

(v) is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or

(vi) is approved for release by written authorization of the disclosing Party; or

(vii) is required to be made public by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

E. Effective Date Of This Section. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement

XXIII. DISPUTE RESOLUTION

The Parties agree that in the event of a default or violation hereunder, or for any dispute arising under this Agreement or related agreements the Parties may have in connection with this Agreement, the Parties shall first confer to discuss the dispute and seek resolution prior to taking any action before any court or regulator, or before authorizing any public statement about or authorizing disclosure of the nature of the dispute to any third party. Such conference shall occur at least at the Vice President level for each Party. In the case of Pacific, its Vice President for Local Competition, or equivalent officer, shall participate in the meet and confer meeting, and TCG Regional Vice President, Western Region, or equivalent officer, shall participate. Thereafter, the Parties will employ the Dispute Resolution procedures set forth in pp. 36-39 of the Order.

XXIV. UNIQUE CIRCUMSTANCES

TCG and Pacific acknowledge that the terms of this Agreement are appropriate for initial tandem-level interconnections between the Parties, given the particular networks deployed by each and the need for swift deployment of interconnection trunks. This Agreement shall not, therefore, be considered precedential with regard to interconnection between any other parties.

XXV. EXECUTION IN DUPLICATE

This Agreement may be executed in duplicate copies, and, upon said execution, shall be treated as an executed document.

XXVI. NOTICES

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

Pacific Bell
Marlin Ard, Deputy General Counsel
140 New Montgomery St., 16th Floor
San Francisco, CA 94105

Teleport Communications Group
Jim Washington
Western Region Vice President
Michael Morris, Director Regulatory Affairs
201 North Civic Drive, Suite 210
Walnut Creek, California 94596

Each Party shall inform the other of any changes in the above addresses.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Lee Bauman
Vice President
Local Competition
Pacific Bell

Jim Washington
Regional Vice President
Western Region
Teleport Communications Group
On behalf of
TCG-Los Angeles
TCG-San Francisco
TCG-San Diego

LOCAL INTERCONNECTION
Bilateral Agreement Template/Worksheet

CLC: TCG

	Topic	Pacific Bell Reference(s)	CLC Reference(s)	Notes / Status
1	Internetwork provisioning information and guidelines.			
2	SS7 and other critical internetwork compatibility testing.			
3	Special protocol implementation agreements.			
4	Diversity requirements.			
5	Installation, maintenance guidelines and responsibilities.			

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Bilateral Agreement Template

	Bilateral Agreement	Pacific Bell Reference(s)	CLC Reference(s)	Notes / Status
6	Network security requirements.			
7	Performance standards and service level agreements.			
8	Specific versions/issues of protocol or interface specifications.			
9	Maintenance procedures, including trouble reporting, status, etc.			
10	Internetwork trouble resolution and escalation procedures.			

Bilateral Agreement Template

	Bilateral Agreement	Pacific Bell Reference(s)	CLC Reference(s)	Notes / Status
11	In-depth root cause analysis of significant failures.			
12	Explicit forecasting information re: direct and subtending traffic.			
13	Explicit expectations regarding interoperability testing requirements.			
14	Network management (network element growth, NPA splits, etc.).			
15	Operating procedures.			

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	Bilateral Agreement	Pacific Bell Reference(s)	CLC Reference(s)	Notes / Status
16	Routing and screening administration.			
17	Synchronization design and Company-wide coordinator(s).			
18	Performance requirements.			
19	Responsibility assignment (facility assignment, testing, control, etc.).			
20	Information sharing for analysis and problem identification.			

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	Bilateral Agreement	Pacific Bell Reference(s)	CLC Reference(s)	Notes / Status
21	Network transition and service rearrangement management.			
22	Calling Party Number privacy management.			
23	Traffic engineering design criteria and capacity management.			
24	Tones and announcements for unsuccessful call attempts.			
25	Mutual aid agreement(s).			

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Bilateral Agreement Template

	Bilateral Agreement	Pacific Bell Reference(s)	CLC Reference(s)	Notes / Status
26	Emergency communications plan.			
27	Billing records data exchange.			
28	Pre-cutover internetwork trunk testing.			

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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Telecommunications Branch
Commission Advisory and Compliance Division

RESOLUTION T-15824
January 17, 1996

R E S O L U T I O N

RESOLUTION T-15824. PACIFIC BELL (U-1001-C). ORDER ADOPTING WITH MODIFICATIONS THE CO-CARRIER INTERCONNECTION AGREEMENT BETWEEN PACIFIC BELL AND MFS INTELENET OF CALIFORNIA

BY ADVICE LETTER 17879, FILED ON NOVEMBER 20, 1995.

I. SUMMARY

This resolution approves with modifications the co-carrier interconnection agreement (PB/MFS contract) between Pacific Bell (Pacific) and MFS Intelenet of California, Inc. (MFS) filed in Advice Letter (AL) Number (No.) 17879. The modifications make any rates subject to adjustment pending Commission disposition of rates in the local competition proceeding (R.95-04-043/ I.95-04-044) and the Open Access and Network Architecture Development (OANAD) proceeding (R.93-04-003/I.93-04-002). The contract is modified to comport with a prior agreement between Pacific, MFS and other parties regarding the rates for local transport of switched access, adopted in D.95-12-020.

Protests to Pacific's AL No. 17879 were filed by the California Telecommunications Coalition (Coalition) and the Commission's Division of Ratepayer Advocates (DRA).

Pacific filed AL No. 17879 on November 20, 1995, requesting approval of a co-carrier interconnection agreement between itself and MFS. The major provisions of the agreement include:

It allows immediate interconnection of MFS and Pacific networks for the exchange of local calls in a seamless manner. It calls for the use of "one-way" trunk groups and establishes mutually agreed to meet points for interconnection.

MFS will match the Commission approved "rating areas" for the rating of local and toll calls in Pacific's serving area. MFS will have access to NXX codes, and Pacific will not charge MFS for opening these codes in Pacific's switches.

MFS will jointly provide switched access to allow customers and interexchange carries to complete, or originate, toll calls over the MFS and Pacific networks. Revenues from switched access will be shared based on industry standards.

Pacific and MFS agreed to reciprocal compensation for local traffic at a rate of $0.0075 per minute. Rates comparable to Pacific's switched access rates will apply for the completion of intraLATA toll calls, and a rate of $0.0087 per minute applies to calls completed through interim number portability services.

Pacific will allow access to a number of its support services including E911, directory assistance, directory listing and call referral services. The contract also covers 900/976 and certain operator functions.

Resale of Pacific's unbundled loops (links) is permitted beginning April 1, 1996. Prices are established for business and residence loops based on geographic zones in California. Pacific and MFS have agreed to non-recurring charges and the coordination process for installing loops.

Interim number portability is provided through Pacific's Directory Number Call Forwarding Service (DNCF) at a rate of $3.25 per month. Non-recurring charges for DNCF have been agreed upon.

The contract is for 2 years and allows for extension if amenable to both parties.

II. BACKGROUND

In Decision (D.) No. 95-07-054, the Commission authorized those facilities based competitive local carriers by the Commission to begin offer local service January 1, 1996. In that decision the Commission established initial rules for both the incumbent local exchange carriers and the competitive local carriers (CLCs) for a variety of issues including interconnection. The Commission allowed

> "...in those cases where CLCs are able to reach mutually agreeable terms and conditions for interconnection including compensation, the negotiating parties are free to execute such interconnection agreements without need for Commission-imposed rules on terms and conditions." (P. 37)

In the same decision, the Commission established criteria that interconnection agreements must not be unduly discriminatory nor anti-competitive. The Commission directed that approval of such contracts should be sought via advice letter. On November 20, 1995, Pacific filed AL No. 17879 requesting approval of a co-carrier interconnection agreement under the authority of D.95-07-054.

Subsequent to Pacific's filing, the Commission adopted additional criteria governing interconnection and related issues in D.95-12-056. In that decision, the Commission allowed parties to negotiate interconnection agreements and provided the parties with preferred outcomes in the event disputes arose in negotiations or breach of contract claims were made public. An expedited approval process for approving interconnection agreements was adopted for agreements that addressed the interconnection issues resolved in D.95-12-056. Agreements that contained provisions not resolved in D.95-12-056 or prior Commission decisions could be filed under the normal approval process contained in General Order (G.O.) 96-A.

III. PROTESTS

Protests to Pacific's AL No. 17879 were filed on December 11, 1995, by the Coalition; and on December 13, 1995, by DRA.

Pacific and MFS separately responded to the protests on December 19, 1995.

The Coalition argues that the PB/MFS contract contained in AL 17879 is excessive in scope and fails to comply with the Commission's rules and orders. The Coalition contends that the excessive breadth of the PB/MFS contract is illustrated by its treatment of NXX Codes, unbundled loops, call termination charges and switched access rates. The Coalition also argues that the PB/MFS contract should not act as a public policy template for resolving issues pending in R.95-04-043/I.95-04-044. DRA supports the arguments in the Coalition's protest and stresses that the PB/MFS contract is (1) anti-competitive in its assignment of unbundled loops (also known as interconnector capacity), (2) discriminatory in the assignment of NXX codes and (3) fails to disclose important elements of the deal between Pacific and MFS contained in the "Companion Agreement". The "Companion Agreement" was attached to the Coalition's protest and represents common positions Pacific and MFS have agreed to take on incentive regulation, local competition and related matters.

The Coalition contends that D. 95-07-054 invited carriers to negotiate an agreement solely concerning the interconnection of networks. By going beyond this limited scope, the Coalition believes that the PB/MFS contract attempts to address and decide most of the issues awaiting decision in the local competition docket.

The Coalition contends that MFS is given preferential access to certain scarce resources that are necessary for all CLCs to compete, namely NXX codes and unbundled loops. According to the Coalition, the PB/MFS contract allows MFS to obtain an NXX code in every exchange or rate center area MFS plans to offer local exchange service. The Coalition contends that there are not sufficient NXX codes to allow all CLCs to take advantage of this approach. In addition, the Coalition argues that Pacific is providing these codes to MFS for no charge when Pacific had proposed to charge CLCs $22,000 for each NXX code. DRA contends that Pacific, in its capacity as the California Code Administrator, has indicated that it will charge all other carriers who wish to open NXXs. Consequently, DRA believes the deal puts all other CLCs at a disadvantage in relation to MFS.

The Coalition and DRA also claim that the PB/MFS contract makes unbundled loops available to MFS on a preferential basis. The Coalition argues that other CLCs have been denied access to unbundled loops despite efforts before the Commission and in direct negotiations with Pacific to obtain them. DRA also expressed concern that the PB/MFS contract has locked in 50% of Pacific's interconnection capacity for MFS. DRA is unconvinced by Pacific's assertions that Pacific could make unbundled loops available to more than one carrier under the same terms it has MFS.

The Coalition's protest argues that the PB/MFS contract attempts to override the Commission's decision concerning mutual traffic exchange or "bill and keep" by establishing a per call compensation rate for local traffic.

The Coalition asserts that the PB/MFS contract includes customer specific, below tariff switched access rates which violate the IRD Decision (D.94-09-065), the local transport restructure settlement (D.95-12-020) and section 453 of the Public Utilities Code. According to the Coalition, the IRD decision does not allow Pacific to enter into customer specific contracts for Category I services, such as switched access. The PB/MFS contract also provides for a customer specific contract for "local transport-termination" a service for which Pacific agreed to forego contracting flexibility in D.95-12-020. Finally, the Coalition contends that by charging MFS a lower rate for switched access than it charges other carriers, the PB/MFS contract is discriminatory.

The Coalition also lists a series of reasons why any agreement between Pacific and MFS should not serve as a precedent for deciding issues pending in the local competition proceeding. The Coalition argues that MFS has unique circumstances based on its focus on business customers in large cities which make some aspects of the PB/MFS contract appropriate for MFS but inappropriate for other CLCs planning to serve a larger market including residential customers. The Coalition also lists a number of terms of the PB/MFS contract which may not satisfy other CLCs. According to the Coalition, the PB/MFS contract should not serve as precedent because: (1) MFS intends only to serve business customers in downtown areas of large cities, not

residential customers, (2) MFS has agreed to compensate Pacific for local call termination, (3) MFS has agreed to an interim local number portability rate in excess of Pacific's costs, (4) MFS has agreed to pay rates which are high and deaveraged, (5) MFS agreed to unfavorable collocation terms, (6) MFS agreed to a number allocation system which would exhaust available telephone numbers, (7) MFS agreed to pay a tandem switching charge in excess of Pacific's costs, (8) MFS has "settled" issues in which it has no interest or is not a party, such as intraLATA equal access.

DRA contends that the Companion Agreement is material to the Commission's consideration of the PB/MFS contract because it obligates MFS to support Pacific's policy positions in a number of pending proceedings. The Coalition argues that the totality of the deal between Pacific and MFS can only be understood by examining the Companion Agreement together with the PB/MFS contract.

On December 19, 1995 both Pacific and MFS responded to the Limited Protest of the Coalition and the Protest of DRA. Both Pacific and MFS contested each of the assertions made by the Coalition and DRA. Pacific contends that the PB/MFS contract is a product of the type of negotiation the Commission has consistently urged during the local competition proceeding. MFS argues that, contrary to the protests of the Coalition and DRA, the MFS/PB contract (1) is proper in scope, (2) does not impede the implementation of general rules and (3) does not give MFS an unfair competitive advantage.

Pacific and MFS argue that the PB/MFS contract is not too broad in scope. Pacific argues that the Commission's orders do not limit agreements to the interconnection of networks at the exclusion of other issues. Pacific asserts that the Commission did not limit the scope of intercarrier agreements and has consistently encouraged parties to negotiate intercarrier issues. MFS contends that, "there is no reason to ascribe such a narrow interpretation to the term 'interconnection' as that proposed by the Coalition." (MFS Response, at 6) Later in its response MFS asserts that the items included in the PB/MFS contract, namely facility architecture, numbering issues, meetpoint billing, etc., are typically included in agreements between LECs in California and between LECs and CLCs in other states.

Pacific refutes the Coalition's assertion that the PB/MFS contract gives MFS preferential treatment with respect to numbering resources by indicating that it is willing to offer such resources to any carrier under the same terms as the agreement with MFS. Pacific further indicates that it has modified its position from charging for opening NXX codes to allowing for a surcharge for its customers to pay for opening NXX codes. Pacific states that it has agreed not to require payment for charges from other CLCs until the Commission resolves this issue so that all carriers will receive NXX codes at the same rate. Finally, Pacific concludes that the PB/MFS

contract's NXX code assignment arrangements will not exacerbate number exhaust.

Pacific claims that, contrary to the assertions of DRA and the Coalition, there is nothing discriminatory or anti-competitive about its provision of unbundled loops. Pacific maintains that the PB/MFS contract is available to other carriers under the same terms and conditions as those offered MFS. As part of such an PB/MFS contract, carriers would have access to unbundled loops. Pacific states that DRA and the Coalition's assertion that MFS will receive 50% of the total loop capacity is incorrect. MFS contends that DRA and the Coalition's assertion concerning loop capacity is conjecture without any supporting evidence.

Pacific and MFS argue that their reciprocal call termination compensation agreement is allowable, even though the Commission has adopted mutual compensation for call termination. Pacific contends that by adopting mutual compensation in the interim, the Commission did not prohibit reciprocal compensation. Pacific claims that the Commission's invitation to negotiate interconnection terms was an invitation to resolve interconnection compensation as well. MFS states that the Commission's Competition Order (D.95-07-054) explicitly invites LECs and CLCs to seek Commission approval for call termination compensation arrangements other than bill-and-keep.

Pacific and MFS contend that since the toll termination rate in the PB/MFS contract is not a switched access rate, the limitation on contracts for switched access in the IRD (D.94-09-065) and Local Transport Restructuring (D.95-12-020) decisions are irrelevant. Pacific states that toll termination is not switched access and that the PB/MFS contract indicates that switched access traffic cannot be completed over the type of trunks covered by the agreement. MFS states that switched access is a service provided to Inter-Exchange Carriers, not Local Exchange Carriers. In addition, both Pacific and MFS assert that the price they have agreed to for toll termination is not lower, but the same as the average per minute price charged under tariffed rates for switched access.

Pacific agrees with the Coalition that the PB/MFS contract is not meant to be precedential on any pending Commission decisions, while MFS argues that any discussion about whether or not the PB/MFS contract should be precedential for disposing issues pending in the local competition rulemaking should be discussed in that proceeding and are irrelevant to the Commission's consideration of the PB/MFS contract. Both Pacific and MFS contest the Coalition's list of assertions concerning MFS's unique circumstances. According to Pacific and MFS: (1) MFS is not committed to limiting itself to downtown business customers in large cities; (2) Pacific argues that the Commission has not mandated bill and keep, while MFS contends that the Commission invited carriers to negotiate other call termination charge arrangements; (3) Pacific and MFS argue that the $3.25 rate for interim number portability is reasonable; (4) Pacific and MFS contend that the rate for unbundled loops will

allow MFS to compete, even for residential customers; (5) the collocation terms are workable; (6) the NXX arrangement will not exacerbate number exhaust; (7) the tandem switching charge is reasonable and sensible.

Pacific and MFS argue that the Companion Agreement is irrelevant for consideration about the PB/MFS contract. MFS argues that Pacific and MFS cannot derail Commission consideration of issues in a proceeding. The Companion Agreement does not settle any issues or limit the participation of either party in Commission proceedings. Finally, MFS argues that the purpose of Commission review of the PB/MFS contract is to determine whether it is anti-competitive or discriminatory. The shared policy positions in the Companion Agreement cannot be considered anti-competitive or discriminatory conduct.

IV. DISCUSSION

A. Scope of The MFS/PB Contract

In its protest, the Coalition claims that the MFS/PB contract exceeds the scope of issued allowed in D.95-07-054 for an interconnection agreement. The Coalition recommends that the agreement be refiled in two parts: (1) An AL addressing just the interconnection issues as outlined in D.95-07-054, and (2) A stipulation and/or settlement according to the Commission's Rules of Practice and Procedure. We agree with the Coalition that the MFS/PB contract exceeds our definition of an interconnection agreement, as we outlined in D.95-07-054. In D.95-12-056 we added detail to our definition of an interconnection agreement. In that decision, we allowed parties to file agreements that "address issues beyond the scope of interconnection" and would treat those contracts as G.O. 96-A contracts (D.95-12-056, P. 40). Pacific submitted its co-carrier interconnection agreement as permitted by D.95-07-054. We will treat AL No. 17879 and the attached MFS/PB contract as a contract filed by advice letter requesting authority in accordance with G.O. 96-A.

B. Companion Agreement

The Coalition and DRA reveal that a companion agreement to the one contained in AL No. 17879 was signed by MFS and Pacific. This agreement, contained in the Coalition's protest, represents MFS support of Pacific's policy positions in a variety of proceedings before the Commission. In its response, Pacific asserts that the companion agreement is not a prerequisite to the interconnection agreement. Pacific states its willingness to enter into contracts similar to that in AL No. 17879 with any carrier that desires to without a companion agreement. We agree with the Coalition and DRA that the companion agreement should NOT be a requirement either for MFS or for other carriers to obtain a contract similar to the MFS/PB contract. Accordingly, we note that our conditional approval of the agreement, as outlined below, is limited to the agreement filed under AL No. 17879.

C. Fair and Equal Access to Competition Limiting Resources

As the Coalition notes in its protest, the MFS/PB contract addresses many of the resources that CLCs will need to compete in the local exchange market. We share the Coalition's concern that some of these resources are scarce. In the MFS/PB contract, MFS access to these resources is established by terms and rates. Many of these terms and rates are being resolved by the Commission in the Local Competition and OANAD proceedings. We will require Pacific to make all rates in the MFS/PB contract subject to future modification by the Commission. This requirement comports with G.O. 96-A, Section X, which requires all contracts presented for Commission approval to contain substantially the following condition:

> This contract shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as said Commission may, from time to time, direct in the exercise of its jurisdiction.

As the Commission resolves rates and terms for services/network components contained in the MFS/PB contract, we may require Pacific to modify the rates and terms in the contract to comport with the Commission's resolution of these issues. Below, we address term and conditions beyond rates for NXX codes, unbundled loops, call termination and interim number portability provided by CLC remote call forwarding.

1. NXX Codes

In the MFS/PB contract, MFS will be assigned all NXX codes it needs without charge, which will maintain call rating consistency. The Coalition and DRA protest this provision because Pacific is supposed to be neutral in its role as code administrator, NXX codes are a known scarce resource, and free codes are contrary to Pacific's position in R.95-04-043/ I.95-04-044, Phase II. We share the Coalition's and DRA's concern that charging different entities different rates for the same service may be discriminatory. In addition, the Commission believes it is important to price scarce resources efficiently to avoid wasteful use of those resources. The actual determination of scarcity and appropriate cost for NXX code openings are issues pending before the Commission. In R.95-04-043/I.95-04-044, the Commission intends to address both the appropriate cost for opening NXX codes and recovery of those costs. Until the Commission has resolved the NXX code cost issue, we require Pacific to create a memorandum account and to book the costs associated with opening NXX codes into that account. When the Commission determines costs for NXX code openings and a recovery mechanism, Pacific should apply the cost and recovery mechanism to the balance of the memorandum account in accordance with the Commission disposition of this issue.

Due to our concern about the possibility of premature number exhaust resulting from the free opening of NXX codes, we will also prohibit Pacific from providing more than one code opening per rating area at this time. Additional code openings may be permitted if MFS can demonstrate in an advice letter that utilization warrants additional codes at the time the advice letter is filed.

Pending outcome of the proceeding addressing NXX code provisioning, Pacific shall honor requests for code openings by other competitive local carriers under the same terms described above. However, Pacific must provide NXX code openings to other CLC's without imposing a requirement to agree to any of the other terms and conditions contained in the agreement under consideration here.

2. **Unbundled Loops**

Both DRA's and the Coalition's protests raise concern that MFS will get preferential access to Pacific's loops. In its response, Pacific asserted that any carrier that signs a similar agreement would receive loops with the same priority as MFS. Even with Pacific's assurance that similarly situated carriers would receive the same number of loops, we share the protestants' concern about preferential treatment over carriers that do not enter into contracts similar to the MFS/PB contract. In our OANAD proceeding we will determine terms and conditions that ensure that unbundled loops will be available on a non-discriminatory basis.

In addition, we believe unbundled loops are an essential input needed to establish multiple ubiquitous networks. The rates Pacific and MFS agreed to in the contract must not confer on MFS an undue competitive advantage because the loops are priced below cost. Therefore, we will require Pacific to modify the loop prices contained in the agreement to be no lower than the TSLRIC based cost floors adopted in our OANAD proceeding when the issue is resolved. We do not intend to modify the agreement if prices for loops in the agreement meet or exceed those we adopt in OANAD. The MFS/PB contract contains performance guarantees and other conditions that we suspect were factored into the price MFS and Pacific agreed to in the contract. Our restriction on the price Pacific may charge for loops will assure us that this resource is not priced anti-competitively and allow Pacific and MFS to maintain the balance between terms and conditions and rates.

We are concerned that if, in the future, Pacific Bell makes unbundled loops available only upon the condition that purchasers pay a call termination charge for interconnection, such action may constitute an unlawful tying arrangement, in violation of state and federal anti-trust laws. We expect Pacific Bell to negotiate the terms of unbundled loops and the terms of call termination independently.